

M. Curcio



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tic-La-Dex Business Systems, Inc.

File: B-236469

Date: October 17, 1989

DIGEST

Protest that agency improperly applied the Trade Agreements Act to protester's offer is denied where identical issues raised by the same protester against the same procuring activity were recently considered and rejected and the protester has not offered any additional information to warrant a different conclusion.

DECISION

Tic-La-Dex Business Systems, Inc., protests the rejection of the proposal it submitted in response to General Services Administration (GSA) solicitation No. 2FY-EAJ-M-A3459-S.

We deny the protest.

The solicitation was issued on September 22, 1986, for various office supplies listed under multiple award Federal Supply Schedule FSC 75, Part II, Section A. The solicitation provided that the contract award period would be from March 1, 1987 through February 28, 1990. On March 15, 1988, GSA issued amendment No. 1 to the solicitation which created an open season for the receipt of new offers and added 6 additional items to the solicitation, including Special Item Number (SIN) 342-312.

The solicitation contained Federal Acquisition Regulation (FAR) § 52.225-8, "Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate" and FAR § 52.225-9, "Buy American Act-Trade Agreements Act-Balance of Payments Program." FAR § 52.225-8 required offerors to specify the country of origin of any foreign end product offered and to otherwise certify that they were offering domestic end products. FAR § 52.225-9 contained relevant definitions of "designated country end product," "domestic end product," and "foreign end product."

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Tic-La-Dex submitted an offer under the open season amendment for various items under SIN 342-312. In its FAR § 52.225-8 certificate, Tic-La-Dex indicated a point of production of the offered items by country and production percentage which showed that it was offering products that were at least 50 percent the product of South Africa or Taiwan. GSA contacted Tic-La-Dex concerning its certification so that GSA could determine whether to apply the Trade Agreements Act. Ongoing correspondence between the parties followed, but, according to GSA, Tic-La-Dex failed to supply an adequate certification. By letter dated July 20, 1989, GSA rejected Tic-La-Dex's offer.

On August 7, Tic-La-Dex protested to our Office that its offer was improperly rejected because the solicitation contained FAR § 14.407-6, entitled "Preference for Small Business Concerns and Labor Surplus Area Concerns," and, under FAR § 25.403(c), the Trade Agreements Act does not apply to purchases under small or small disadvantaged business preference programs. Tic-La-Dex also argued that in any event the products the firm offered were derived from material that originated in a foreign country but were substantially transformed into different items in the United States and thus qualified as designated country end items exempt from application of the Trade Agreements Act.

The protester's allegations regarding the application of the Trade Agreements Act were previously considered in a recent decision by our Office involving another GSA multiple award schedule. Tic-La-Dex Business Sys., Inc., B-235016.2, Oct. 6, 1989, 89-2 CPD ¶ _____. In that decision we found that FAR § 14.407-6 did not take the procurement outside the scope of the Trade Agreements Act because it establishes not a preference program for small business concerns, but merely a procedure by which agencies are to choose among schedule contractors when there are offers at the same price. We also found that a foreign product which is substantially transformed into a different item in the United States does not become a designated country end item exempt from application of the Trade Agreements Act, since the United States is not listed among the designated countries. See FAR § 25.401. The identical issues and arguments are involved in this case, and Tic-La-Dex has not provided any additional information warranting a change in our prior decision. Accordingly, we deny the protest.

for Seymour Spas
James F. Hinchman
General Counsel